

VZCZCXRO1785
RR RUEHCHI RUEHDT RUEHHM
DE RUEHHI #0835/01 1030418
ZNR UUUUU ZZH
R 130418Z APR 06 ZDK
FM AMEMBASSY HANOI
TO RUEHC/SECSTATE WASHDC 1445
INFO RUEHHM/AMCONSUL HO CHI MINH CITY 0920
RUEHXS/ASEAN REGIONAL FORUM COLLECTIVE

UNCLAS SECTION 01 OF 06 HANOI 000835

SIPDIS

SENSITIVE
SIPDIS

STATE FOR EAP/MLS

E.O. 12958: N/A
TAGS: [PREL](#) [PGOV](#) [PHUM](#) [ETRD](#) [EINV](#) [ECON](#) [VM](#)
SUBJECT: HANOI DISCUSSES NEW LAW ON ASSOCIATIONS

HANOI 00000835 001.2 OF 006

11. (SBU) Summary and Comment: On April 3, the GVN presented its ninth draft of a New Law on Associations to donor community Ambassadors, representatives of Vietnam's associations and international NGOs and other interested parties. Follow-on discussion was open and pointed. Controversial elements in the latest draft include the retention of redundant State management of associations by line ministries and the Ministry of Home Affairs (MOHA), vague definitions of proscribed activities, cumbersome registration procedures and lack of a clear prohibition of commercial activity under the law's new favorable tax regime for associations. The Danish Ambassador subsequently sent a letter on behalf of donors outlining these reservations. The new draft will be debated by the National Assembly in its upcoming special session in May. A more liberal, rival draft written by civil society promoters may also be debated. The GVN is hesitant to promulgate this civil society version of the law because it rightly recognizes that, depending on how it is done, legalizing associations could be like opening Pandora's Box. Vietnam's leadership is likely to remain very skittish about the potential this law has to open up society, and thus further debate and foot-dragging is likely in the cards. End Summary and Comment.

Draft Nine

12. (SBU) On April 3, MOHA held an open discussion on the ninth version of its draft Law on Associations. Approximately fifty outside representatives participated in the discussion, including Ambassador Marine, the Head of Delegation of the European Commission, a representative of the United Nations Development Program, the Ambassadors of Denmark, France, Sweden and Bulgaria, as well as representatives from other donors, Vietnamese associations and foreign NGOs.

13. (SBU) The discussion was led by Vice Minister Dang Quoc Tien and Nguyen Ngoc Lam, Director General of MOHA's Department of NGOs. Lam began the session with an extensive history of the latest draft of the Law on Associations.

14. (SBU) Lam noted that as of a June 2005 statistical survey, Vietnam had 320 nationwide associations and 2,150 provincial and municipal associations. In addition, there were "tens of thousands" of rural and district-level associations, with a greater concentration in economically developed locations. The current legal status for these associations depends on a 1957 decree (No. 102/SL/L004) and the July 2003 decree (No. 88/2003/ND-CP). The draft law aims to address "mismatches and difficulties" in associations management stemming from "shortage of

quantity," "poor alignment of policies and coordination" and "poor division of labor regarding management." The law drafters also seek to specify new procedures for "redressing complaints and denunciations about associations." Lam further admitted that current procedures for establishing an association are cumbersome, that the process for admitting foreign members to associations needs to be clarified, that responsibility for "State management" of associations has not been assigned and that associations operating under current decrees are ineffective and inefficient because of a "trend to bureaucratize them."

15. (SBU) Lam explained that MOHA's drafters were given new guidelines to develop a Law on Associations in 1992 so "citizens can directly participate in the national reconstruction." Their operating principles are: 1) to institutionalize guidelines and principles for associations that are part of the Communist Party of Vietnam (CPV); 2) to elucidate "stipulations of the Constitution" regarding associations; 3) to ensure that socialist democracy is strengthened; 4) to create an "enabling and conducive" legal framework for associations; 5) to incorporate the legacy of previous legal decrees governing associations; 6) to incorporate practical experience and lessons learnt into the new law; and, 7) to "critically adapt" international experience concerning associations into the new law. The project to develop this new law is part of the official legislative agenda for the 2006 National Assembly. In preparation for this, MOHA's drafters have undertaken a general review of the GVN's experience with associations, reviewed current legal documents governing associations, participated in domestic seminars on associations, conducted overseas study tours and "collected practical ideas for operation, assent and accommodation," Lam said.

16. (SBU) Lam noted that the ninth draft of the Law on Associations has nine chapters comprising sixty-two separate

HANOI 00000835 002.2 OF 006

articles. Chapter I (Articles 1-8) outlines general provisions of the law including: the right to create associations, the scope of the law, principles for organization and operation of associations, proscribed activities and "behaviors" and the responsibilities of State agencies charged with management of associations.

17. (SBU) Chapter II (Articles 9-19) defines eligibility and procedures for establishing associations. According to these articles, an association is "eligible for creation" (i.e., licensing) if it provides a legal statement of goals and objectives, has an appropriate organizational structure and number of members, has a charter, has a head office, owns property and does not have a "coincidence of names" (NFI). The chapter also states that a campaign committee for the creation of an association must have five members, and defines nomenclature, logos, seals and the requirements for documentation of registration, as well as the major required provisions of a charter. Certificates licensing the creation of associations must be granted within sixty days of application. The association must hold its inaugural congress within ninety days of receiving the certificate, although this deadline may be extended by thirty days. Chapter II also defines what must happen at the congress, as well as the required reports of its results and the authorized means for announcing establishment of the association. Finally, the chapter states that MOHA has the national-level authority to grant certificates of establishment while Provincial People's Committees (PPCs) are responsible at the local level.

18. (SBU) Lam stated that Chapter III (Articles 20-25) defines membership for official, associate and honorary members of associations, and defines admission, expulsion, obligations and rights of members under its charter. Associates and honorary members have the same rights as official members, but are barred from voting (or running)

for leadership positions and from voting on association business, he said.

¶9. (SBU) Chapter IV (Articles 26-39) defines the parameters for the organization and operation of an association. An association is comprised of a congress, a board of management, an inspection board and other structures defined by its charter. "In the interests of democracy," a congress must have the participation of two-thirds of the association's total membership and must be held every five years and must address specific issues for each term, Lam said. Voting principles for participants and parameters for "ad hoc" congresses are also defined. Reports on the congress must be available within thirty days of its conclusion. Both the management and inspection boards of associations also have delineated responsibilities and authorities, and the head of the Management board must meet certain qualifications. The chapter also authorizes an association to establish representatives and branch offices in foreign countries, though legal membership is qualified and association responsibilities and authorities defined in the law, he added.

¶10. (SBU) Lam noted that Chapter V (Articles 40-52) describes procedures for uniting, splitting or dissolving associations, as well as management board and State agency responsibilities in cases of dissolution. Associations may unite if they operate in the same field and area, and union promotes "coordination, harmonization and organization" of common activities, he said.

¶11. (SBU) According to Lam, Chapter VI (Articles 53-55) governs foreign associations and foreign organizations operating in Vietnam. Foreigners residing permanently in the country for more than twenty-four months, and foreign-based organizations, may form associations, under specific procedures and defined areas of operation.

¶12. (SBU) Chapter VII (Articles 56-58) authorizes ownership of property and codifies the finances of an association. Associations are permitted to raise revenues through membership fees, support from the State budget, individual and organization contributions and from "legal incomes." Expenditures must follow the rules of an association's charter. Management of property and finances is also subject to the association's charter and the laws of Vietnam. Associations that "operate for the public good" as charity or humanitarian organizations are entitled to preferential taxation, he said.

¶13. (SBU) Lam noted that Chapter VIII (Articles 59-60) deals with commendations and awards for good associations and

HANOI 00000835 003.2 OF 006

delineates procedures for "dealing with violations." Chapter IX (Articles 61-62) lays out the process for the law to be implemented under governmental decree.

¶14. (SBU) In conclusion, Lam explained that there are still three areas to be resolved, "subject to differing points of view," concerning the draft Law on Associations. First, there is still debate about the scope of the law, i.e., whether the Vietnam Fatherland Front (VFF), the Ho Chi Minh Communist Youth Union (HCMC CYU), the Vietnam Federation of Trade Unions (VFTU), the Vietnam Women's Association (VWA), the Vietnam Farmers' Association (VFA) and the Vietnam War Veterans' Association (VWVA) should fall within its purview. In addition, some people argue that associations of foreigners and foreign organizations should not be covered by the law. Secondly, there is still disagreement concerning whether ministries and sectoral agencies should be allocated responsibility for managing the operation of associations that fall under their jurisdiction. Finally, Lam acknowledged that "further considerations are needed to simplify the procedures for the establishment of associations."

Discussion

¶15. (SBU) Ambassador Peter Hansen of Denmark noted that the donor community welcomed the opportunity to openly discuss this draft law and thanked MOHA for arranging the dialogue session. The law is an important step for citizen involvement in Vietnam's social and economic development. He noted, however, that international concerns remain about how the draft gives discretionary powers to State officials under Article 8, point 3. Assigning such poorly defined powers undermines the rule of law and is not in accordance with good governance. "A good law is a clear law," he added. The Law on Associations should clearly state what a citizen can or cannot do. Hansen also noted that the draft assigns two separate institutions: MOHA and a responsible agency at the national level, and the PPCs and agency departments at the provincial level. This system of "redundant management" means that associations will "never know who they are actually working with," he said. Under the registration process as written, NGOs or associations must make at least two applications to register with the different management entities. In addition, the registration process is needlessly complicated and cumbersome, which increases the likelihood of "rent-seeking" and corruption, which is particularly dangerous as Vietnam tries to establish a new system under the rule of law. A rule-of-law system is the most conducive to facilitating growth of civil society in Vietnam, he said.

¶16. (SBU) Ambassador Markus Cornaro, Head of the European Commission Delegation, noted his appreciation that the draft law addresses how foreigners, NGOs and international organizations may register associations. However, he noted that it is not clear how NGOs that have already been established in Vietnam will be affected. He also noted that in the sixth draft of the law, associations were allowed to comment and advise the GVN on national policy; however, this provision was struck from the latest draft. Permission for associations to delve into national policy is important because "it strengthens associations' participation in national politics," he said. Finally, he observed that the current draft law also "tends to bureaucratize" civil society despite MOHA's stated intention to move away from such a framework.

¶17. (SBU) Ambassador Marine noted that the United States believes that a Law on Associations is important for empowering an increasingly vibrant civil society. He agreed with the comments voiced by his colleagues and noted that Lam had acknowledged many of them in his presentation. The new law should be drafted through a process of continued consultation and dialogue with the donor, NGO and Vietnamese association communities and with the input of the Vietnamese people. The Law on Associations should also be as simple, open and non-intrusive as possible to remove the burden of Government micro-management. The United States stands ready to provide any technical assistance or professional expertise required to facilitate the expeditious drafting and promulgation of this new law, he said.

¶18. (SBU) A representative from a civil society association (NFI) asked why some organizations were included in the law and some were not, namely VFF, HCMC CYU, VFTU, VWA, VFA and VWVA, as well as religious organizations. She noted that community-level organizations are also not covered by the

HANOI 00000835 004.2 OF 006

law. The UNDP representative asked why the current draft did not include changes recommended by a recent UNDP study comparing MOHA's draft with a draft law written by the Vietnam Union of Scientific and Technical Associations (VUSTA). (NOTE: A previous MOHA draft was widely criticized on December 13, 2005, by representatives of various associations. On December 23, VUSTA released its own draft

highlighting inadequacies in the MOHA draft. End Note).

¶19. (SBU) In his response, Vice Minister Tien did not comment on specific issues, but addressed general areas of concern. Regarding NGOs, he noted that the GVN always tries to encourage people to participate in the policy of "Doi Moi" (renovation) and the transformation of Vietnam into a market economy. "The Law on Associations was drafted in that spirit," he said. Regarding State management, he noted that MOHA has been assigned the responsibility of managing associations in certain areas by the GVN, including the responsibility for granting certificates of establishment. However, other ministries will also be responsible. This does not mean that line ministries will handle day-to-day management, but associations will have to ask for approval for activities from them. Associations will be subject to the law and ministries will have to manage the sectors under which they operate. Associations will have to follow regulations in each sector.

¶20. (SBU) Regarding exclusion of the six "mass organizations" from the purview of the law, Tien noted that this must be viewed in the "context of Vietnamese history." These organizations all existed before the establishment of the Communist Party of Vietnam and before the establishment of the Socialist Republic of Vietnam. They worked with the GVN to develop the State. Nevertheless, the draft is "still being consulted" in this area. Tien also noted that a legal document will eventually be promulgated to facilitate the formation of international organizations in Vietnam. Regarding community-based associations, MOHA will take public concerns into account; however, the law won't cover small groups like clubs and other community groups.

¶21. (SBU) Ambassador Jean-Francois Blarel of France observed that Vice Minister Tien did not address the Danish Ambassador's concerns about discretionary powers. He also noted that the French Embassy organized a 2004 seminar for MOHA drafters, but very few of the ideas developed in that seminar were incorporated into this draft. The recommendation to exclude associations from the normal taxation regime will lead to problems without the inclusion of the recommended provision to prevent commercial organizations from utilizing association status to profit improperly from business conducted under this favorable regime. Ambassador Cornaro seconded this point.

¶22. (SBU) Ambassador Hansen reiterated that the draft law appears to mandate unified management of associations under MOHA; however, line ministries are also tasked with management. The term "management" itself suggests control rather than regulatory supervision. Organizations and associations by definition shouldn't be managed by the State; rather, they should be self-governing institutions that are subject to law. As written, the Law on Associations is completely counter to MOHA's stated goal to allow the establishment of as many associations as possible.

¶23. (SBU) Tien responded that the draft incorporates some international advice; however, drafters took into account the context of Vietnam. "We had a long war and were subject to a centrally planned economy for a long time so we have to be judicious in what experiences we draw on as we integrate," he said. He added that associations are subject to the tax law, which is why MOHA did not include the French ideas in the current draft. Improper business practices are covered under the tax law.

¶24. (SBU) Regarding management, Tien explained that under Articles Six and Seven, there is no confusion over areas of responsibility. MOHA will issue certificates of establishment while line ministries will regulate sectors in which associations operate. For example, an association related to pharmaceuticals would be subject to Ministry of Health regulations, but would not be managed by the ministry on a day-to-day basis. The drafters "are trying to end the traditional system of ministry patronage," he said. The GVN is trying to facilitate citizen participation in civil

society so it won't interfere in the management of associations.

¶25. (SBU) Regarding national policy, Tien noted that Vietnam

HANOI 00000835 005.2 OF 006

is no longer a centrally planned economy, and thus associations are already able to advise the Government about policy. For example, many different groups recently registered their opinions and ideas with the GVN about the Son La Dam project in Son La Province.

¶26. (SBU) Ambassador Marine noted that use of the term "management of associations" is the root of the problem. What MOHA describes is a legal framework. The law should not talk about management at all. Associations should be simply told to obey national law. There is no need for line ministries to be given management responsibilities. The law should also spell out that associations have the right to advise on national policy, he added.

¶27. (SBU) Ambassador Hansen stated that the issue of State employee discretion in interpreting the law has still not been addressed. Under the draft as written, any State official could decide whether an association can be formed, but if they don't like the association or decide that it is "immoral," they can prevent its establishment until the right bribe is made. MOHA must clarify limitations for associations to avoid running the great risk of expanding corruption, and damaging movement toward rule of law in Vietnam.

¶28. (SBU) The PPWT (NFI) representative noted that under the draft law, associations that have not been officially established have no legal status and thus no rights under law. This could be especially problematic for community associations. She also seconded Ambassador Marine's point that an association's right to comment and advise on policy should be spelled out in the law.

¶29. (SBU) Director General Lam responded that all associations should be able to establish legal status because all groups of more than two people must register. In any event, small groups should not be concerned about their legal status because the draft law only talks about groups with legal status (sic). There is also no regulation in the draft regarding associations that have no members, e.g., foundations. The drafting committee will recommend that the GVN establish a separate foundations law to cover these groups.

¶30. (SBU) The Program Officer of the Swiss Embassy noted that once the law is promulgated, it will affect many existing organizations. VUSTA has come up with an alternate draft. How was the VUSTA law taken into account in the draft? Also, the Swiss representative seconded the UNDP representative's points and asked why the documentation needed to apply for establishment was not explicitly defined. She also noted that previous drafts of the law prescribed a minimum membership for establishment; however the present draft only states that "an association must have a large enough membership."

¶31. (SBU) Lam recommended that dialogue participants compare and contrast the VUSTA and MOHA drafts on their own. In any event, VUSTA associations will not be affected by the Law on Associations. He also noted that Decree 31 and Decree 65 already spell out the necessary documents for applying to establish an association. Further implementing decrees will also cover this issue.

¶32. (SBU) Ambassador Hansen reiterated the donor community's appreciation for the opportunity to comment on the draft law and asked that MOHA's drafters continue this dialogue after they have had a chance to discuss the issues raised in this session. Tien responded that after the law is promulgated a

number of decrees will be passed with further guidance on the meaning of the law.

Donor Follow-up

¶33. On April 7, Ambassador Hansen sent a letter drafted with input from the rest of the donor community to Tien reiterating concerns voiced during the open session. In particular, at our urging, he reiterated concerns about the explicit use of the term "State management" in the draft. The letter suggested that the law use the terms "regulatory authority" and "registering responsibility" to define the roles of line ministries and MOHA, and drop the term "management" entirely. This would clarify concerns about redundant management.

Comment

HANOI 00000835 006.2 OF 006

¶34. The GVN is hesitant to promulgate this civil society version of the law because it rightly recognizes that, depending on how it is done, legalizing associations could be like opening Pandora's Box. Vietnam's leadership is likely to remain very skittish about the potential this law has to open up society, and thus further debate and foot-dragging is likely in the cards. After all, the first draft of this law surfaced in 1992.

MARINE